

State of Minnesota
Ramsey County

District Court
Second Judicial District

Court File Number: **62-CV-18-7236**

Case Type: Civil Other/Misc.

FILE COPY

**Notice of Case Filing and
Assignment**

Minnesota AgriGrowth Council, Inc., Minnesota Milk Producers Association, Minnesota Pork Producers' Association, Minnesota State Cattlemen's Association, Chicken and Egg Association of Minnesota et. al. vs Minnesota Pollution Control Agency

Date Case Filed: **October 26, 2018**

Court file number **62-CV-18-7236** has been assigned to this matter. All future correspondence must include this file number, the attorney identification number, and must otherwise conform to format requirements or they **WILL BE RETURNED**. Correspondence and communication on this matter should be directed to the following court address:

**Ramsey County Court Administration
15 West Kellogg Boulevard Room 600
St Paul MN 55102**

Assigned to: **Judge Jennifer L. Frisch**

If ADR applies, a list of neutrals is available at www.mncourts.gov (go to Alternative Dispute Resolution) or at any court facility. Please direct all scheduling inquiries on this matter to Assignment at 651-266-8306.

Dated: October 29, 2018

Michael F. Upton
Court Administrator
Ramsey County District Court

cc: **MATTHEW CHARLES BERGER
LORI SWANSON**



STATE OF MINNESOTA

IN DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT
Case Type: Civil Other/Miscellaneous
Court File No. _____

Minnesota Milk Producers Association,
Minnesota Pork Producers' Association,
Minnesota State Cattlemen's Association,
Chicken and Egg Association of Minnesota
(CEAM), Minnesota Turkey Growers
Association, Minnesota AgriGrowth
Council, Inc., and Minnesota Farm Bureau
Federation,

Plaintiffs/Petitioners,

vs.

Minnesota Pollution Control Agency,

Defendant/Respondent.

COMPLAINT AND PETITION FOR WRIT OF PROHIBITION

Plaintiffs/Petitioners Minnesota Milk Producers Association, Minnesota Pork Producers' Association, Minnesota State Cattlemen's Association, Chicken and Egg Association of Minnesota, Minnesota Turkey Growers Association, Minnesota AgriGrowth Council, and Minnesota Farm Bureau Federation, as and for their Complaint and Petition for Writ of Prohibition against Defendant/Respondent Minnesota Pollution Control Agency, state and allege as follows:

1. Plaintiff/Petitioner Minnesota Milk Producers Association is a nonprofit corporation duly organized under the laws of the State of Minnesota with its registered office and principal place of business located in Wright County, Minnesota. The

Minnesota Milk Producers Association is a grassroots membership organization with approximately 800 members and was organized to promote and protect the interests of Minnesota's dairy farmers.

2. Plaintiff/Petitioner Minnesota Pork Producers' Association is a nonprofit corporation duly organized under the laws of the State of Minnesota with its registered office and principal place of business located in Blue Earth County, Minnesota. The Minnesota Pork Producers' Association is a grassroots membership organization with approximately 800 members and was organized to promote and protect the interests of Minnesota's pig farmers.

3. Plaintiff/Petitioner Minnesota State Cattlemen's Association is a nonprofit corporation duly organized under the laws of the State of Minnesota with its registered office located in McLeod County, Minnesota. The Minnesota State Cattlemen's Association is a grassroots membership organization with more than 1,000 members and was organized to promote and protect Minnesota's cattle farmers and other individuals who are part of the cattle community in Minnesota.

4. Plaintiff/Petitioner Chicken and Egg Association of Minnesota (CEAM) is a nonprofit corporation duly organized under the laws of the State of Minnesota with its registered office and principal place of business located in Wright County, Minnesota. The Chicken and Egg Association of Minnesota is a grassroots membership organization with approximately 250 members and was organized to promote and protect the interests of Minnesota's chicken and egg farmers.

5. Plaintiff/Petitioner Minnesota Turkey Growers Association is a nonprofit corporation duly organized under the laws of the State of Minnesota with its registered office and principal place of business located in Wright County, Minnesota. The Minnesota Turkey Growers Association is a grassroots membership organization with approximately 450 members and was organized to promote and protect the interests of Minnesota's turkey farmers.

6. Plaintiff/Petitioner Minnesota AgriGrowth Council, Inc., is a nonprofit corporation duly organized under the laws of the State of Minnesota with its registered office and principal place of business located in Ramsey County, Minnesota. The Minnesota AgriGrowth Council is a membership organization with more than 170 members and was organized to foster long-term sustainability, competitiveness, and business growth in Minnesota's agriculture and food systems industry.

7. Plaintiff/Petitioner Minnesota Farm Bureau Federation is a nonprofit corporation duly organized under the laws of the State of Minnesota with its registered office and principal place of business located in Dakota County, Minnesota. The Minnesota Farm Bureau Federation is a grassroots membership organization with more than 30,000 member families to promote and advocate on behalf of agriculture in Minnesota.

8. Defendant/Respondent Minnesota Pollution Control Agency (the "MPCA") is an agency of the State of Minnesota with its headquarters and principal office located in Ramsey County, Minnesota.

ENVIRONMENTAL REVIEW PROCESS

9. An “environmental impact statement” is a detailed document that “describes [a] proposed action in detail, analyzes its significant environmental impacts, discusses appropriate alternatives to the proposed action and their impacts, and explores methods by which adverse environmental impacts of an action could be mitigated.” Minn. Stat. § 116D.04, subd. 2a(a) (2018); *see* Minn. R. 4410.0200, subp. 26. An environmental impact statement must be prepared in advance of any “major governmental action” when “there is potential for significant environmental effects resulting from” the action. *Id.*

10. In contrast, an “environmental assessment worksheet” is “a brief document which is designed to set out the basic facts necessary to determine whether a [longer and more detailed] environmental impact statement is required for a proposed action.” Minn. Stat. § 116D.04, subd. 1(c) (2018); *accord* Minn. R. 4410.0200, subp. 24.

11. Under Minnesota law, the completion of an environmental assessment worksheet is mandatory for “the expansion of an existing facility by 1,000 animal units or more.” Minn. R. 4410.4300, subps. 1, 29. The MPCA is the “responsible governmental unit” for environmental review related to such an expansion of an animal feedlot. *Id.*

12. Upon the submission and acceptance by the responsible governmental unit of a complete environmental assessment worksheet for a proposed project, “[t]he responsible governmental unit shall promptly publish notice of the completion of an environmental assessment worksheet” in various locations, including “at least one

newspaper of general circulation in the geographic area where the project is proposed” and “on a website that has been designated as the official publication site for publication of proceedings, public notices, and summaries of a political subdivision in which the project is proposed.” Minn. Stat. § 116D.04, subd. 2a(d) (2018); *see* Minn. R. 4410.1400-4410.1500.

13. After a notice of the completion of an environmental assessment worksheet has been published by a responsible governmental unit, “[c]omments on the need for an environmental impact statement may be submitted to the responsible governmental unit during a 30-day period following publication of the notice.” Minn. Stat. § 116D.04, subd. 2a(d) (2018); *accord* Minn. R. 4410.1600.

14. “The responsible governmental unit’s decision on the need for an environmental impact statement . . . shall be made within 15 days after the close of the comment period.” Minn. Stat. § 116D.04, subd. 2a(d) (2018); *accord* Minn. R. 4410.1700, subp. 2.B.

15. Although applicable Minnesota laws and regulations expressly allow one 15-day extension of the deadline for a responsible governmental unit to decide on the need for an environmental impact statement, neither the statute nor the regulations authorize any extension of the 30-day public comment period on an environmental assessment worksheet. Minn. Stat. § 116D.04, subd. 2a(d) (2018); *accord* Minn. R. 4410.1600-4410.1700.

16. Under Minnesota law, “a final governmental decision may not be made to grant a permit” for or approve such an expansion of an existing animal feedlot until

either "a negative declaration has been issued on the need for an environmental impact statement" or "the environmental impact statement has been determined adequate." Minn. Stat. § 116D.04, subd. 2b (2018).

17. Minnesota Statutes § 116D.04, subdivisions 11 and 13 (2018), expressly provide that "[i]f the board or governmental unit which is required to act within a time period specified in this section fails to so act, any person may seek an order of the district court requiring the board or governmental unit to immediately take the action mandated by subdivision[] 2a," and that "[t]his section may be enforced by injunction, action to compel performance, or other appropriate action in the district court of the county where the violation takes place."

DALEY FARMS' PROPOSED EXPANSION

18. Daley Farms of Lewiston, LLP ("Daley Farms"), is a limited liability partnership that operates existing dairy facilities located in Winona County, Minnesota, with a total of 1,608 cows and 120 calves (or a total of 2,275.2 animal units). Daley Farms is a member of the Minnesota Milk Producers Association.

19. Daley Farms has invested significant time and resources to develop plans and is proposing to modify its existing dairy facilities and expand and modernize the existing operation to include a total (after expansion) of 3,983 cows, 525 heifers, and 120 calves (or a total of 5,967.7 animal units).

20. Because Daley Farms is proposing to expand its existing dairy facilities and operation by more than 1,000 animal units, Daley Farms is required to complete an environmental assessment worksheet and complete the environmental review process

before it may obtain any permits or approvals from the MPCA or Winona County for the project. The MPCA is the responsible governmental unit with respect to the environmental review for Daley Farms' proposed expansion and modernization project. See Minn. R. 4410.4300, subps. 1, 29.

21. On October 1, 2018, the MPCA published a Notice of Availability of an Environmental Assessment Worksheet (EAW) with respect to Daley Farms' proposed expansion and modernization of its existing dairy facilities (the "Notice of Availability"). Consistent with the requirements of Minnesota Statutes § 116D.04, subdivision 2a(d), and Minnesota Rule 4410.1600, the Notice of Availability originally provided that the public comment period on the environmental assessment worksheet for Daley Farms' proposed project ends at 4:30 p.m. on October 31, 2018 (30 days after the Notice of Availability was published). The Notice of Availability also scheduled a public informational meeting on October 16, 2018, to present information and answer questions regarding the environmental assessment worksheet for Daley Farms' proposed project.

22. On October 11, 2018, the MPCA informed Daley Farms that it had unilaterally decided to extend the public comment period for an additional 15 days and subsequently modified the Notice of Availability to provide that the public comment period on the environmental assessment worksheet for Daley Farms' proposed project ends at 4:30 p.m. on November 15, 2018. A true and correct copy of the modified Notice of Availability – which shows the original public comment deadline crossed off and the new, "extended" deadline – is attached hereto as **Exhibit A**.

23. Upon learning of the extension of the public comment period on the environmental assessment worksheet for its proposed project, Daley Farms, through its legal counsel, immediately provided verbal notice to the MPCA on October 11, 2018, that Daley Farms objected to the MPCA's unilateral and unauthorized action to extend the public comment period. Daley Farms, again through its legal counsel, also provided written notice of its objection to the MPCA's unilateral and unauthorized extension of the public comment period on October 15, 2018.

24. Since Daley Farms objected to the MPCA's unilateral and unauthorized extension of the public comment period for its proposed expansion project, Daley Farms and the Minnesota Milk Producers Association have had multiple communications with the MPCA to attempt to compromise and amicably resolve the dispute with the MPCA regarding the improper extension of the public comment period and ensure that a final decision on the need for an environmental impact statement for the project will be made within the timelines established in the applicable statutes and rules. These efforts to resolve this dispute have not been successful.

25. If it is allowed to stand, the MPCA's unilateral and unauthorized action to extend the public comment period on Daley Farms' environmental assessment worksheet will cause substantial harm to Daley Farms by delaying Daley Farms' ability to obtain the necessary governmental approvals, lock in interest rates and obtain financing, and begin construction of the proposed expansion and modernization project.

26. The MPCA's improper assertion that it may unilaterally extend the public comment period on an environmental assessment worksheet—despite the specific procedures and timelines provided in the clear and unambiguous language of Minnesota Statutes § 116D.04, subdivision 2a(d), and Minnesota Rules 4410.1600—will also cause significant harm to other livestock farmers across the State of Minnesota by injecting significant uncertainty into the environmental review process established by the Minnesota Legislature and Environmental Quality Board.

**COUNT I
DECLARATORY JUDGMENT**

27. The Minnesota Milk Producers Association, Minnesota Pork Producers' Association, Minnesota State Cattlemen's Association, Chicken and Egg Association of Minnesota, Minnesota Turkey Growers Association, Minnesota AgriGrowth Council, and Minnesota Farm Bureau Federation restate and re-allege each of the preceding paragraphs as if fully set forth herein.

28. Minnesota Statutes § 116D.04, subdivision 2a(d), and Minnesota Rule 4410.1600, clearly and unambiguously provide that public comments may only be submitted for 30 days following publication of a notice of availability of an environmental assessment worksheet for a project for which the MPCA is the responsible governmental unit.

29. The MPCA asserts that it has the authority to disregard the clear and unambiguous language of the applicable statute and regulation and unilaterally extend the public comment period, over the objection of a project proposer, for an

environmental assessment worksheet for which the MPCA is the responsible governmental unit.

30. A genuine and justiciable controversy exists between the Minnesota Milk Producers Association, Minnesota Pork Producers' Association, Minnesota State Cattlemen's Association, Chicken and Egg Association of Minnesota, Minnesota Turkey Growers Association, Minnesota AgriGrowth Council, and Minnesota Farm Bureau Federation, on the one hand, and the MPCA, on the other hand, as to whether the MPCA may unilaterally extend the public comment period on the environmental assessment worksheet for Daley Farms' proposed expansion and modernization of its dairy facilities and continue to accept public comments on the environmental assessment worksheet between 4:30 p.m. on October 31, 2018 (30 days after the Notice of Availability was published), and 4:30 p.m. on November 15, 2018.

31. Pursuant to the Uniform Declaratory Judgments Act, Minnesota Statutes chapter 555, the Minnesota Milk Producers Association, Minnesota Pork Producers' Association, Minnesota State Cattlemen's Association, Chicken and Egg Association of Minnesota, Minnesota Turkey Growers Association, Minnesota AgriGrowth Council, and Minnesota Farm Bureau Federation are entitled to a judgment declaring that the MPCA does not have the legal authority to extend the public comment period for an environmental assessment worksheet or to continue to accept public comments on the environmental assessment worksheet for Daley Farms' proposed expansion and modernization of its dairy facilities after 4:30 p.m. on October 31, 2018 (30 days after the Notice of Availability was published).

**COUNT II
INJUNCTION**

32. The Minnesota Milk Producers Association, Minnesota Pork Producers' Association, Minnesota State Cattlemen's Association, Chicken and Egg Association of Minnesota, Minnesota Turkey Growers Association, Minnesota AgriGrowth Council, and Minnesota Farm Bureau Federation restate and re-allege each of the preceding paragraphs as if fully set forth herein.

33. Daley Farms and the Minnesota Milk Producers Association, Minnesota Pork Producers' Association, Minnesota State Cattlemen's Association, Chicken and Egg Association of Minnesota, Minnesota Turkey Growers Association, Minnesota AgriGrowth Council, and Minnesota Farm Bureau Federation will suffer irreparable harm if the MPCA is allowed to unilaterally extend the public comment period on the environmental assessment worksheet for Daley Farms' proposed expansion and modernization of its dairy facilities and to continue to accept public comments on the environmental assessment worksheet after 4:30 p.m. on October 31, 2018 (30 days after the Notice of Availability was published) in violation of the clear and unambiguous requirements of Minnesota Statutes § 116D.04, subdivision 2a(d), and Minnesota Rule 4410.1600.

34. Minnesota Statutes § 116D.04, subdivision 13, specifically authorizes the district court to issue an injunction to compel performance of the obligations set forth in Minnesota Statutes § 116D.04, subdivision 2a, including without limitation the 30-day public comment period for an environmental assessment worksheet.

35. The Minnesota Milk Producers Association, Minnesota Pork Producers' Association, Minnesota State Cattlemen's Association, Chicken and Egg Association of Minnesota, Minnesota Turkey Growers Association, Minnesota AgriGrowth Council, and Minnesota Farm Bureau Federation are entitled to an injunction from this Court prohibiting the MPCA from accepting public comments on the environmental assessment worksheet for Daley Farms' proposed expansion and modernization of its dairy facilities after 4:30 p.m. on October 31, 2018 (30 days after the Notice of Availability was published).

**COUNT III
WRIT OF PROHIBITION**

36. The Minnesota Milk Producers Association, Minnesota Pork Producers' Association, Minnesota State Cattlemen's Association, Chicken and Egg Association of Minnesota, Minnesota Turkey Growers Association, Minnesota AgriGrowth Council, and Minnesota Farm Bureau Federation restate and re-allege each of the preceding paragraphs as if fully set forth herein.

37. The MPCA has unilaterally extended the public comment period on the environmental assessment worksheet for Daley Farms' proposed expansion and modernization of its dairy facilities and indicated that it intends to continue to accept public comments on the environmental assessment worksheet between 4:30 p.m. on October 31, 2018 (30 days after the Notice of Availability was published), and 4:30 p.m. on November 15, 2018.

38. The MPCA's unilateral extension of the public comment period on the environmental assessment worksheet for Daley Farms' proposed expansion and modernization of its dairy facilities, over the objection of Daley Farms, and the MPCA's stated intention to continue to accept public comments on the environmental assessment worksheet after 4:30 p.m. on October 31, 2018 (30 days after the Notice of Availability was published) is not authorized by law.

39. If allowed, the MPCA's unauthorized and illegal exercise of its power to unilaterally extend the public comment period on the environmental assessment worksheet for Daley Farms' proposed expansion and modernization of its dairy facilities, and stated intention to continue to accept public comments on the environmental assessment worksheet after 4:30 p.m. on October 31, 2018 (30 days after the Notice of Availability was published) will cause injury to Daley Farms and the Minnesota Milk Producers Association, Minnesota Pork Producers' Association, Minnesota State Cattlemen's Association, Chicken and Egg Association of Minnesota, Minnesota Turkey Growers Association, Minnesota AgriGrowth Council, and Minnesota Farm Bureau Federation for which there is no adequate remedy at law.

40. The Minnesota Milk Producers Association, Minnesota Pork Producers' Association, Minnesota State Cattlemen's Association, Chicken and Egg Association of Minnesota, Minnesota Turkey Growers Association, Minnesota AgriGrowth Council, and Minnesota Farm Bureau Federation are entitled to a writ of prohibition from this Court prohibiting the MPCA from accepting public comments on the environmental assessment worksheet for Daley Farms' proposed expansion and modernization of its

dairy facilities after 4:30 p.m. on October 31, 2018 (30 days after the Notice of Availability was published).

WHEREFORE, the Minnesota Milk Producers Association, Minnesota Pork Producers' Association, Minnesota State Cattlemen's Association, Chicken and Egg Association of Minnesota, Minnesota Turkey Growers Association, Minnesota AgriGrowth Council, and Minnesota Farm Bureau Federation respectfully request the following relief from this Court:

1. A judgment pursuant to Minnesota Statutes chapter 555 declaring that the MPCA does not have the legal authority to extend the public comment period for an environmental assessment worksheet or to accept public comments on the environmental assessment worksheet for Daley Farms' proposed expansion and modernization of its dairy facilities after 4:30 p.m. on October 31, 2018 (30 days after the Notice of Availability was published);
2. An injunction and/or a writ of prohibition prohibiting the MPCA from accepting public comments on the environmental assessment worksheet for Daley Farms' proposed expansion and modernization of its dairy facilities after 4:30 p.m. on October 31, 2018 (30 days after the Notice of Availability was published);
3. An award of their costs and disbursements incurred in this action; and
4. Such other and further relief as the Court may deem to be just and appropriate under the circumstances.

The undersigned hereby acknowledges that sanctions may be awarded pursuant to Minnesota Statutes § 549.211.

Dated this 26th day of October, 2018.



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520 Lafayette Road North
St. Paul, MN 55155-4194

Notice of Availability of an Environmental Assessment Worksheet (EAW)

Daley Farms of Lewiston, LLP – 2018 Dairy Expansion

Doc Type: Public Notice

Public comment information

EAW public comment period begins: October 1, 2018
 EAW public comment period ends: ~~4:30 p.m. on October 31, 2018~~ EXTENDED to 4:30 p.m. on November 15, 2018
 Notice published in the EQB Monitor: October 1, 2018

Permit public comment period begins: October 1, 2018
 Permit public comment period ends: ~~October 31, 2018~~ EXTENDED to 4:30 p.m. on November 15, 2018

Facility specific information

Facility name and location:
 Daley Farms of Lewiston, LLP
 18774 Highway 14
 Lewiston, MN 55952
 Utica Township
 Winona County

Facility contact:
 Ben Daley
 Daley Farms of Lewiston, LLP
 18774 Highway 14
 Lewiston, MN 55952
 Phone: 507-251-2444
 Email: BDaley7@hotmail.com

MPCA contact information

MPCA EAW contact person:
 Kim Grosenhelder
 Resource Management and Assistance Division
 Minnesota Pollution Control Agency
 520 Lafayette Road North
 St. Paul, MN 55155
 Phone: 651-757-2170
 Fax: 651-297-2343
 Email: kim.grosenhelder@state.mn.us

MPCA Permit contact person:
 Mark P. Gernes
 Watershed Division
 Minnesota Pollution Control Agency
 18 Wood Lake Drive SE
 Rochester, MN 55904
 Phone: 507-206-2643
 Fax: 507-280-5513
 Email: mark.p.gernes@state.mn.us

Admin staff phone: 651-757-2100

General information

The Minnesota Pollution Control Agency (MPCA) is distributing this Environmental Assessment Worksheet (EAW) for a 30-day review and comment period pursuant to the Environmental Quality Board (EQB) rules. The MPCA uses the EAW and any comments received to evaluate the potential for significant environmental effects from the project and decide on the need for an Environmental Impact Statement (EIS).

An electronic version of the EAW is available on the MPCA Environmental Review webpage at <https://www.pca.state.mn.us/eaw>. If you would like a copy of the EAW or Permit or have any questions on the EAW or Permit, contact the appropriate person listed above.

Description of proposed project

Daley Farms of Lewiston, LLP currently owns and operates three dairy sites (LLP, LLP1, and LLP7) in Utica Township, Winona County. Daley intends to expand its existing dairy at the LLP site, close the LLP1 site and install open-lot runoff controls at the LLP7 site. The expansion at the LLP site will include a total confinement barn with 3,000 dairy cows, a rotary milking parlor, a manure storage basin, a feed storage pad, and stormwater runoff controls.

The MPCA will host a public informational meeting on October 16, 2018, with an open house from 6:00 to 6:30 pm, presentations from 6:30 to 7:00 pm, and questions from 7:00 to 8:00 pm, regarding the EAW and the Permit. The meeting will be at the Lewiston Community Center, 75 Rice Street, Lewiston, MN 55952.

To submit written comments on the EAW and Permit

Written comments on the EAW and the Permit must be received within the comment period listed above.

Submit comments online by clicking on this link: <http://survey.mn.gov/s.asp?k=153730433478>

Or by U.S. mail to:

Kim Grosenheider
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155

NOTE: All comment letters are public documents and will be part of the official public record for this project.

Need for an EIS

The MPCA Commissioner will make a final decision on the need for an EIS after the end of the comment period.